

Water Pollution Control Advisory Council (WPCAC) Conference Call  
January 12, 2006 10:00 a.m. – 10:45 a.m.  
Director's Conference Room 111 Metcalf Building

Call to Order

Chairman Terry McLaughlin called the Water Pollution Control Advisory Council meeting to order on January 12, 2006 at 10:00 a.m.

Roll Call

Council Members Present: Terry McLaughlin (Chair), Smurfit-Stone Container Corp.; Scott Seilstad (via telephone); Peggy Trenk, Montana Association of Realtors (via telephone); Shannon Dunlap, Golden Sunlight Mines, Inc. (via telephone); Barbara Butler, Billings Solid Waste Division (via telephone).

Department Personnel Present: Bob Bukantis (Council Secretary) Water Quality Planning Bureau (WQPB), Planning, Prevention and Assistance Division (PPAD); Bonnie Lovelace Water Protection Bureau (WPB) Permitting and Compliance Division (PCD); Kari Smith WPB, PCD; Petrina Fisher (Administrative Support) WQPB, PPAD.

Approval of [Agenda](#)

Terry McLaughlin asked for additions or changes to the agenda.

A motion to approve the agenda was made and seconded. The motion carried and the agenda was approved as written.

Approval of [Minutes for August 25, 2005 Council Meeting](#)

Terry McLaughlin asked if the Council received the draft minutes and had an opportunity to provide feedback/comment before this meeting. Everyone indicated that they had received the minutes. There were no comments or edits from the Council.

A motion to approve the August 25, 2005 minutes was made and seconded. The motion carried and the August 25, 2005 minutes were approved as written.

Briefing/Update Items

CBM Rulemaking

Bob Bukantis said that the Board held public hearings in Lame Deer and Miles City on November 9<sup>th</sup> and 10<sup>th</sup> and in Helena on December 2<sup>nd</sup>. Those meetings were very well attended with a lot of public comment. One issue that came up was a request to extend the public comment period. The Board agreed to extend the public comment period to January 27<sup>th</sup>. This was supported by both proponents and opponents of the petition to allow the Department time to put together an economic analysis and allow parties on both sides to comment on this analysis of the potential impacts if the proposed rules were adopted. The economic analysis was up on the Department website last week. The economic analysis is about 30 pages long and starts with a list of assumptions used to do the analysis and then looks at low, medium and high potential impacts and a range of scenarios in terms of costs and benefits of adoption of the petition.

### Triennial Review of Montana's Water Quality Standards

Bob Bukantis said the triennial review public comment period was quiet. The Department held a public meeting that had very light attendance and there were only official comments from EPA and WETA. EPA's letter largely supported the rulemaking but had some specific suggestions including corrections to the mixing zone formula, suggestions on changes to the metals standards and some clarifications around specifics in one of the E-coli proposed rules in terms of the number of samples needed to be collected. EPA also suggested the Department more formally adopt the early life stages of fish table for ammonia that the Department uses to help guide permit writers in terms of what sensitive life stages of fish may be in certain waters at certain times of the year. The ammonia standard is more restrictive when there are early life stages of fish present that are more sensitive to high concentrations of ammonia. The table the Department uses offers only a general guidance of what types of fish may be found where, and EPA would like the Department to be more formalized in how this is pulled into the standards.

Terry McLaughlin asked if EPA has this more intensive ammonia perspective, how would that be applied per a given water body segment? Would there be a different set of standards for different times of the year based on early life stages? How would the Department go about factoring that in?

Bob Bukantis said there potentially would be more restrictive standards when early life stages are present. The functional application of this would be when a permit writer would look at what the situation is in a given receiving water. For example if there was a sensitive type of fish spawning in spring, the permit writer would have to consider that the permit may need more protective limits to protect the sensitive life stages of fish during this time. Right now this is not formalized in the standards in terms of trying to say what fish occur when and where. All the Department has currently is when early life stages are present the Department will use a particular formula and values, when the early life stages are not present then the less restrictive values are used. Fish, Wildlife and Parks (FWP) has put together a table that presents the occurrence of different life stages of fish at different time of the year. The Department is not going to adopt this table with this rulemaking because the Department does not believe it is worked out well enough to adopt it into the rules. There were a few minor changes that EPA suggested that the Department may make but some of the comments are things outside the scope of this rulemaking and may be looked into later.

WETA suggested that the metals standard be changed to dissolved metals rather than total recoverable metals and took the position that DEQ standards were more stringent than the federal standards. These are issues the Department will look at, but they are outside the scope of the rulemaking since the Department was not proposing to change the metals standards.

Terry McLaughlin asked that even though both the ammonia and metals received comments, they are not being addressed at this time with the triennial review?

Bob Bukantis said the comments will be addressed but the Department is not expecting to change the standards in the rule package in response to those comments. There are a few things that may be changed but they are minor changes, correction of errors and wording clarifications. The Department is working out the details of this with the Boards attorney.

### CAFO Issues

Kari Smith said the CAFO rule change has been something that has taken a great deal of time. The Department came before the Council in 2004 and at that time was looking at adopting the federal rule, which is referred to as the CAFO 2003 Rule, and rewriting the text and placing that within the state rule. At that time, the Council recommended the Department get public feedback. The Department had five public meetings; some in the Great Falls area were better attended than those in the south-western area. The Department took that information, incorporated it into circular DEQ-9, left the rules verbatim from the federal rule. In December 2004, the Department had proposed to initiate rulemaking with the Board of Environmental Review and was moving forward.

In the legislative session in January 2005, Senate Bill 320 was introduced and subsequently passed into law that affected the fees for CAFO permitting in addition to adopted portions of the 2003 CAFO Rule. In February 2005, the Second Circuit Court appealed per a challenge that was brought by both environmental and industry groups, and issued a decision that is referred to as the Water Keepers Alliance vs. EPA decision. In the meantime, the Department's CAFO rules were becoming confused because of this court issue. In June 2005, the Department went before the Board and requested an extension of the rulemaking in hopes that the Water Keepers Alliance decision would be clarified and EPA would know what direction they were going to take their rule. What has happened is portions of the 2003 CAFO Rules were vacated. Those portions included allowing permitting authorities to issue permits without first reviewing the nutrient management plan and allowing permitting authorities not to include those conditions in the permit file. The 2003 rule said that each facility had to design a nutrient management plan, but it needed to be kept onsite and would be reviewed. This would not keep it in the public record, which in turn circumvented the public participation on the nutrient management plan.

The other item was that the 2003 rule required all CAFOs by definition to apply for permits or apply for a no potential to discharge determination. This portion was vacated. In addition, the Second Circuit Court remanded aspects of the CAFO rule to clarify the public participation process, to make a clear distinction between some effluent limitation guidelines that would affect new swine facilities and veal calf operations and also look at justifications that EPA made during alternate performance standards which said that some large facilities could actually discharge out of the end of a pipe, which a lot of industries do. In order to ensure that the Department has rules that are consistent with EPA and maintain delegation of the program, the Department opted not to rewrite the text of the federal rule, which is what the Department had proposed in December 2004 and got the subsequent extension, but to adopt the federal rule by reference. This insures that whatever the Department adopts is consistent with EPA and any portions that are vacated are not included in the Department's rules.

One of the most important reasons for moving forward with this rather than waiting any longer, is that the current CAFO general permit expired in July 2005. New facilities are requesting permit coverage and DEQ does not have a general permit written at this time. These facilities need this permit in order to receive funding. What the Department needs to do with this in order to have a waste management plan or a nutrient management plan is to have rules that are consistent with the federal rule and part of that is the state specific technical standards. In order to have the effluent limitation guidelines, which are included in part 412, the Department needs to have the state specific standards. EPA has left it to the states to determine these specific

standards. Montana uses the resources from the university systems and USDA to determine what those standards will be. These standards will be incorporated into a new permit. At this time, DEQ has the state's technical standards, which is included in DEQ-9 which has to deal with the nutrient management plan, and the EPA rules adopted by reference. The text of the CAFO rule is much shorter than it was in December 2004 but it is actually the same rule.

Terry McLaughlin asked if what is on the books for Montana is a reduced version of the federal requirements because DEQ adopted them by reference?

Kari Smith said that what is currently on the books for Montana is the 1974 CAFO regulations that EPA changed in 2003. DEQ is still operating under the 1974 regulations. The 2003 rule is moving forward but portions of it need to be clarified as to how to get the public to participate. There needs to be more public participation before any decision can be made. The biggest issue is duty to apply, which had to do with a particular type of operation has to put in an application for a permit. The Second Circuit Court indicated that unless the operation discharges, the operation does not have to put in for a permit, which is the way the 1974 regulation was. The 2003 rule changed this and indicated that every operation needed to put in an application and the Department would decide whether they needed coverage or not.

Terry McLaughlin asked if the Department is able to issue permits at this time, either a general or a specific?

Kari Smith said that the Department needs to write a general permit based on the 2003 rules because the Department is not consistent with the federal regulations at this time. DEQ is operating well behind any other state that got their rules adopted prior to the Second Circuit Court. The Department does not have the rules needed to have consistency with federal regulation, which is why the Department moved ahead and adopted by reference.

Bonnie Lovelace said the Department intends to bring this before the Board and have this rulemaking finalized in February.

Terry McLaughlin asked if nutrient management plans would be required upon acceptance of the 2003 rule?

Kari Smith said there is a portion in the 2003 rule that says nutrient management plans would not be required until December 31, 2006. In October 2005, EPA proposed a new rule to extend those deadlines. The nutrient management plans are currently not required until December 2007. These issues will be resolved but there is no burden on the permit holder to have these nutrient management plans completed until 2007. At that time the remanded and vacated issues will be addressed in rulemaking, which EPA is proposing to initiate in February 2006.

Scott Seilstad asked if the attempt to facilitate public participation is an ongoing effort?

Kari Smith said that in the Second Circuit Court appeals decision, part of the remanded issues had to deal with public participation by being able to review the nutrient management

plan. Right now EPA is saying that the nutrient management plans do not have to be completed until December 2007. The public participation issue will be resolved by the time anyone has to have them written. When a person submits an application to the Department, they submit portions of the nutrient management plan, which is part of how they manage the waste and this becomes part of the permit file and can be reviewed by the public.

Terry McLaughlin asked if a person came in today with an application for a permit and the Department was able to provide them with a permit, would there be something written into the permit that would stipulate they would have to submit a nutrient management plan after it becomes effective in 2007.

Kari Smith agreed that this is how it would be handled. Part of the application process that DEQ has, would be requiring all the information that is in the nutrient management plan so the public would be able to review what they are doing with their waste, how they are managing it and what kinds of crops they are growing. This information is used to develop the entire plan that keeps records; it is BMPs or how they manage farm waste and crops.

### Action Items

#### Selection of New Chair

Terry McLaughlin opened up the chair for nominations.

Scott Seilstad said that Terry McLaughlin has done an excellent job facilitating and attending the meetings and would like to nominate Terry for chair.

There were no other nominations so nominations for chair was closed. A motion was made and seconded for Terry McLaughlin to continue as the chair for WPCAC for the calendar year of 2006, subject to any changes by the Governor should that occur. All present approved the nomination and the motion carried. Terry McLaughlin is re-elected for chair of WPCAC.

#### Meeting Calendar

Bob Bukantis said that there are six meetings proposed for the 2006 calendar year. In past years, the Department has generally scheduled 4-5 meetings a year. There are months where the Board meetings are scheduled back-to-back, for example June and July. In the past, the Department has typically scheduled one Council meeting the month before the two months, simply to reduce the number of Council meetings. This year the Department decided to schedule a Council meeting prior to every Board meeting to allow the Department flexibility in terms of insuring that there is an opportunity to get something before the Council prior to any given Board meeting. This does not necessarily mean more meetings since there may be more cases of canceling meetings for lack of agenda items.

Terry McLaughlin proposed the normal start time of the meetings be changed from 9:30 to 10:00. This extra time does make a difference for those who have to travel to get here. The present Council members agreed to this and future meetings will start at 10:00 unless a special situation arises.

A motion was made and seconded to accept the calendar as written. The motion carried and the calendar for 2006 is approved as written.

General Public Comment on Water Pollution Control Issues

There were no additional comments from the public.

Agenda Items for Next Meeting

There was no agenda items suggested for the next meeting.

Terry McLaughlin adjourned the meeting at 10:45 a.m.